

Message Text

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ACTION ARA-10

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 9885

C O N F I D E N T I A L LIMA 3776

FOR ARA - MR. WILLIAM ROGERS; L - MR. LEIGH; L/ARA - MR. KOZAK
TREASURY - MR. BUSHNELL; EB - MR. GREENWALD; S/P - MR. LORD

FROM UNDER SECRETARY MAW

DELIVER AT OPENING OF BUSINESS MONDAY APRIL 26

EO 11652: GDS

TAGS: EINV, EIND, EMIN, PFOR, PE

SUBJECT: MARCONA NEGOTIATIONS - STATUS REPORT

REF: STATE 100344

1. SUMMARY: AS OF NOON SUNDAY, I AND VARIOUS MEMBERS OF MY GROUP HAD MET CONSECUTIVELY WITH THE PRIME MINISTER, MINISTER OF FINANCE, FOREIGN MINISTER AND THE MINISTER OF COMMERCE, AS WELL AS SEVERAL TIMES WITH AMBASSADOR DE LA PUENTE AND HIS ADVISORS. MARCONA ALSO MEETING REGULARLY WITH MINPECO AND CPV ON ORE SALES AND TRANSPORT CONTRACTS, RESPECTIVELY. PROGRESS HAS BEEN MADE ON MOST OF ISSUES RAISED IN EARLIER CABLES. KEY PROBLEMS AT PRESENT ARE GOP'S APPARENT INABILITY TO COME UP WITH \$33 MILLION IN CASH, TIMING OF SETTLEMENT, AND PERIOD OF ORE SALES AND DELIVERIES. ORIGINAL AGREEMENT IS THUS
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NOT REALLY FULLY SATISFACTORY EITHER TO PERU OR MARCONA. JOINT

COMMUNIQUE AND NOTES HAVE BEEN PARTIALLY REDRAFTED TAKING INTO ACCOUNT DEPARTMENT'S COMMENTS REFTEL AND ARE BEING SENT SEPTTEL. THERE

STILL APPEARS TO BE A CHANCE THAT PACKAGE CONSISTING OF THE TWO COMMERCIAL CONTRACTS, JOINT COMMUNIQUE, EXCHANGE OF NOTES AND PAYMENT ARRANGEMENTS CAN BE APPROVED BY TOMORROW NIGHT BEFORE I LEAVE, ALTHOUGH PERUVIAN LEGAL (AND POLITICAL) REQUIREMENTS MEAN THAT SETTLEMENT CANNOT ACTUALLY TAKE PLACE UNTIL MAY 5. END SUMMARY.

2. WE HAVE SOUGHT IN THE COURSE OF THE PAST FEW DAYS TO WORK OUT WITH THE RESPONSIBLE MINISTERS THE VARIOUS ISSUES WHICH WERE EITHER LEFT VAGUE BY OUR AGREEMENT IN PRINCIPLE OF SEVERAL WEEKS AGO OR HAVE BEEN SUBJECT TO GOP AND MARCONA ATTEMPTS RESPECTIVELY TO LIMIT AND MAXIMIZE BENEFITS OF SETTLEMENT. WHILE FINAL RESULTS ARE NOT IN, SUBSTANTIAL PROGRESS HAS BEEN MADE IN NARROWING DIFFERENCES. HOWEVER,

IT HAS BECOME APPARENT FROM MEETING WITH FINANCE MINISTER BARUA THAT THE GOP'S ECONOMIC SITUATION IS SO CRITICAL THAT A CASH PAYMENT OF \$33 MILLION MAY NOT BE POSSIBLE, AT LEAST NOT IN THE IMMEDIATE FUTURE. WE HAVE BEEN DISCUSSING ALTERNATIVES WITH MARCONA ON THE ASSUMPTION THAT IT IS ESSENTIAL TO TIE DOWN THE SETTLEMENT NOW, EVEN IF THE FULL AMOUNT IS NOT PAID IN CASH IMMEDIATELY. HOPEFULLY, WE CAN FIND A MUTUALLY ACCEPTABLE APPROACH, PERHAPS CONSISTING OF \$15 MILLION IN CASH WITH THE BALANCE OF THE \$33 MILLION TIED IN THE FORM OF A BANK CREDIT TO THE 1.1 MILLION TONS OF PELLETS, DRAWABLE ONLY UPON DELIVERY OF THE PELLETS.

3. DE LA PUENTE AND OTHERS IN THE COMMISSION HAVE BEEN STICKING ON THE \$3.6 MILLION IN INTERCOMPANY PAYMENTS, BUT THE ISSUE HAS NOT BEEN MENTIONED BY ANY OF THE MINISTERS. AFTER A LONG SESSION THIS MORNING

, PERUVIANS AGREED TO SEEK AGREEMENT OF THEIR MINISTERS FOR INCREASING THE BOOK VALUE--WHICH THEY HAVE ESTABLISHED INTERNALLY AT \$33 MILLION--TO \$36.6 MILLION IN ORDER TO PROVIDE \$33 MILLION NET. WHILE NEITHER THE MINISTERS NOR I WERE UNDER THE IMPRESSION THAT THE \$33 MILLION DISCUSSED SEVERAL WEEKS AGO WAS ANYTHING BUT NET, THIS APPARENTLY WAS NOT THE UNDERSTANDING OF THE PERUVIAN COMMISSION, THE MEMBERS OF WHICH ARE OBVIOUSLY WORRIED ABOUT REOPENING THEIR CONFIDENTIAL

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CALCULATIONS SO AS TO PRODUCE THE ADDITIONAL BOOK VALUE.

4. ORE SALES ARRANGEMENTS HAVE BEEN AMONG THE MOST DIFFICULT TO RESOLVE, GIVEN THE FACT THAT THE GOP UNDERSTOOD THAT THE 1.1 MILLION WAS TO BE TAKEN AS SOON AS POSSIBLE--IN ESSENCE OUT OF CURRENT STOCKPILES--WHILE THE 2.0 MILLION TONS IN OPTIONS WERE TO BE EXERCISED, AND THE ORE LIFTED, WITHIN TWO YEARS. MARCONA FELT THAT

THIS SCHEDULE WAS IMPOSSIBLE, AND HAS SOUGHT A MUCH LONGER PERIOD. HOWEVER, AFTER CONVERSATIONS ON THEIR OWN WITH THE PERUVIAN ORE MARKETING ENTITY (MINPECO) AND OUR MEETING WITH MINISTER OF COMMERCE ARIAS, IT WAS AGREED THAT THE GOP WOULD SHOW FLEXIBILITY UP TO A MAXIMUM OF THREE YEARS ON THE DELIVERY SCHEDULES IF MARCONA WOULD CONVERT THE OPTION INTO FIRM SALES AND PERHAPS ACCEPT AN ESCALATOR CLAUSE WHICH WOULD PERMIT MINPECO TO SHARE IN PRICE INCREASES FOR DELIVERIES THAT TAKE PLACE AFTER THE FIRST TWO YEARS. MARCONA IS PREPARED TO AGREE TO MAKE ITS LONG TERM CONTRACTS (WHICH COULD CONTAIN ESCALATOR CLAUSES) ASSIGNABLE TO MINPECO, BUT INSISTS ON A MINIMAL DELIVERY PERIOD OF NEARLY FOUR YEARS, EXTENDABLE. WHILE THERE

REMAIN OTHER ISSUES ON THE SALES CONTRACTS, INCLUDING THE DEFINITION OF MARCONA'S EXCLUSIVE MARKETING TERRITORY, WE STILL HOPE THAT AGREEMENT MIGHT BE REACHED BY THE END OF THE DAY MONDAY.

5. ON THE TRANSPORTATION CONTRACTS, MARCONA IS HOLDING FIRM TO ITS DESIRE TO RECEIVE THE \$12 MILLION IN COMPENSATION FROM THOSE CONTRACTS WITHIN TWO YEARS. WE DOUBT, HOWEVER, THAT THIS WILL BE POSSIBLE, AS THE GOP WISHES TO KEEP THE RATE OF COMPENSATION RELATIVELY CONSTANT AT \$1 (ONE DOLLAR) PER TON. THE GOP IS HOWEVER, PREPARED TO INCREASE THE BASE FREIGHT RATES IN ACCORDANCE WITH AN INDEX OF MARKET RATES, AND TO LIMIT THE CONTRACT TO CF SALES (THUS EXCLUDING

THE ORE PURCHASED BY MARCONA UNDER THEIR ORE CONTRACTS). SOME COMPROMISE MAY BE POSSIBLE IN THE CONTEXT OF AGREEING ON THE ESCALATORS THAT ARE TO BE APPLIED TO THE BASE FREIGHT RATES.

6. IN LIGHT OF REFTTEL, WE HAVE ADVISED GOP THAT COMMUNIQUE REFERRING TO \$33 MILLION PAYMENT AND CONTRACTS IS ESSENTIAL, AND HAVE PARTIALLY REDRAFTED SAME. I BELIEVE LANGUAGE IN PENULTIMATE PARAGRAPHS OF COMMUNIQUE CONSTITUTES CLEAR INDICATION THAT USG CONSIDERS SETTLEMENT CONFIDENTIAL

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TO CONSIST OF BOTH CASH PAYMENT AND ONGOING RELATIONSHIPS, AND THAT REQUIREMENTS OF U.S. AND INTERNATIONAL LAW WILL NOT BE FULFILLED UNTIL ALL ASPECTS OF SETTLEMENT HAVE BEEN FULLY IMPLEMENTED. COMMUNIQUE IS REFERRED TO IN NOTES IN SUCH A WAY AS TO INDICATE THAT THE COMMUNIQUE DEFINES THE "SETTLEMENT", AND GOVERNMENTAL QUITCLAIM IS

LIMITED TO ACTIONS TAKING PLACE PRIOR TO DATE OF SETTLEMENT.

7. GOP HAS INDICATED THAT BEFORE SETTLEMENT CAN OCCUR, COUNCIL OF MINISTERS MUST ISSUE DECREE LAW AUTHORIZING PAYMENT OF THE CASH, AND SUPREME DECREE (LATTER EQUIVALENT TO EXECUTIVE ORDER) AUTHORIZING CPV AND MINPECO TO SIGN THE TRANSPORTATION AND ORE SALES CONTRACTS, RESPECTIVELY. BECAUSE OF MINISTERS' INTENT TO MEET ALL DAY TUESDAY APRIL 25 REGARDING TRIP TO NORTH THAT WILL BEGIN THE NEXT MORNING, MINISTERS WILL NOT BE ABLE TO TAKE NECESSARY ACTION

UNTIL

TUESDAY, MAY 4. WE WILL, HOWEVER, BE LUNCHING WITH THE SIX RELEVANT
MINISTERS MONDAY, AND HOPE TO REACH FULL AGREEMENT ON CONTRACTS,
NOTES, COMMUNIQUE AND MEANS OF PAYMENT OF \$33 MILLION BY THE TIME
I LEAVE LATE MONDAY NIGHT, SO THAT FULL CABINET APPROVAL CAN
BE ADHERED TO, THERE WILL BE NO NEED FOR ME OR OTHER MEMBERS OF THE
TEAM TO REMAIN, AND THE EMBASSY WILL TAKE CHARGE OF THE ACTUAL
SETTLEMENT ON MAY 5. IF NOT, WE WILL HAVE TO REVISE OUR STRATEGY.
DEAN

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